

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

GREAT WALL SZECHAN HOUSE  
RESTAURANT and KAM YU  
Respondents

Case No.: I-00-30148

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**FINAL ORDER**

**I Introduction**

This case arises under the Civil Infarctions Act of 1985 (D.C. Code § 6-2701 *et seq.*) and Title 23, Chapter 30 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-30148) served on February 22, 2001, the Government charged Respondents, Great Wall Szechan House Restaurant and Kam Yu, with a violation of 23 DCMR 3012.2, which requires those engaged in the operation of any restaurant, delicatessen or catering business to report rat or vermin infestation problems to the Department of Health.<sup>1</sup> The Notice of Infraction alleges that the infraction occurred on January 25, 2001 at Respondents’ restaurant located at 1527 14<sup>th</sup> Street, N.W., and it seeks a fine of \$1,000.00.

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<sup>1</sup> 23 DCMR 3012.2 provides: “In case of rat or vermin infestation, operators shall report the infestation to the Director for the purpose of obtaining proper advice and instruction in order to eliminate the infestation.”

On March 14, 2001, this administrative court received a plea of Admit with Explanation from Respondents, along with a request for a reduction of the fine imposed, or, in the alternative, a three-month payment plan. Respondents assert that their restaurant is located in an old building, surrounded by empty lots on both sides, and that they have been trying their best to address the rodent infestation problem. In support of their assertion, Respondents attached to their letter of explanation a January 24, 2001 two-year extermination contract with J.C. Ehrlich Co., Inc. and various extermination services invoices. Respondents further assert that, as a result of the rodent infestation problem, their restaurant was closed for six days, causing a substantial loss in revenue.

On March 19, 2001 this administrative court issued an order permitting the Government to reply to Respondents' submissions. The Government filed a reply on March 28, 2000, stating that it did not object to a suspension or reduction of the statutory penalty.<sup>2</sup> The Government's reply also provided: "The Government acknowledges the Respondents' good faith effort to correct the rodent infestation and recognizes the loss of revenue due to the establishment being closed for six (6) days."

## **II. Findings of Fact**

1. By their plea of Admit with Explanation, Respondents admit they violated 23 DCMR 3012.2 on January 25, 2001 at 1527-14<sup>th</sup> Street, N.W.

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<sup>2</sup> Because Respondents timely answered the Notice of Infraction, no statutory penalty is applicable. See D.C. Code § 6-2704(a)(2). I conclude, therefore, that the Government's reference to "the statutory penalty" relates to the applicable fine for a violation of 23 DCMR 3012.2.

2. On January 25, 2001, Respondents failed to report infestation to the Director of the Department of Health for the purpose of obtaining advice and instruction in order to eliminate the infestation.
3. As a result of the infestation, Respondents' restaurant was closed for six (6) days, resulting in a substantial loss of revenue.
4. By hiring J.C. Ehrlich Co, Inc. to provide monthly extermination services as of January 24, 2001 for a period of twenty-four (24) months, Respondents took prompt efforts to attempt to correct their rodent infestation problem.
5. Respondents have acknowledged responsibility for their unlawful conduct.
6. The evidence in the record does not establish that Respondents have a history of non-compliance.
7. Recognizing Respondents' efforts to correct the violation and their financial losses, the Government does not oppose a reduction or suspension of the fine.

### **III. Conclusions of Law**

1. Respondents violated 23 DCMR 3012.2 on January 25, 2001 at 1527-14<sup>th</sup> Street, N.W. A fine of \$1,000.00 is authorized for that violation. 16 DCMR 3216.1(j)
2. Respondents have requested a reduction of the fine imposed, or, in the alternative, a three-month period in which to pay the full fine. The Government has not opposed a reduction or suspension of the fine. In light of Respondents' acceptance of responsibility, prompt efforts to correct the infraction and the lack of evidence in the record of a history of non-compliance, a reduction, but not a suspension, of the fine is

appropriate. Accordingly, the fine will be reduced to \$500.00. D.C. Code §§ 6-2703(b)(6) and 6-2712(a)(2); U.S.S.G. 3E1.1.

3. Respondents requested either a reduction of the fine or, alternatively, a payment plan for the full \$1,000.00 fine to be scheduled over a three-month period. Because I have granted a reduction of the fine, I will not address Respondents' payment plan request at this time. If, however, Respondents still wish to request a payment plan, they may file such a request no later than ten (10) days prior to the payment deadline set forth below.

#### **IV. Order**

Therefore, upon the entire record in this case, it is hereby this \_\_\_\_\_ day of \_\_\_\_\_, 2001:

**ORDERED**, that Respondents shall pay a total of **FIVE HUNDRED DOLLARS (\$500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). Any request for a payment plan pursuant to D.C. Code § 6-2703(b)(5) shall be filed with this administrative court, and concurrently served upon the Government, within ten (10) calendar days of the date of mailing of this Order; and it is further

**ORDERED**, that, unless otherwise ordered by this administrative court, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of

this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Code § 6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/      **8/17/01**

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Mark D. Poindexter  
Administrative Judge